

# Alert

## Glitnir Trading Protocol Impacted by Closing of Transfer Register

September 10, 2015

Glitnir hf. (“Glitnir”) has announced that as of the end of day on Sept. 11, 2015 (“Transfer Cut-Off Time”), it will no longer be processing Claim Transfer Request Forms (“CTRFs”) or issuing any Notices of Successful Transfers (“NOSTs”). Parties to unsettled claims trades that require assignment of title must submit their CTRFs to Glitnir’s transfer agent, Epiq Bankruptcy Solutions LLC, or Epiq Systems Limited (“Epiq”) before the end of day on Friday, Sept. 11, 2015. Glitnir will then undertake to process any claim transfer requests submitted within four to nine days from submission and to issue the relevant NOSTs. If the parties cannot meet the Transfer Cut-Off Time, they will need to settle by way of participation or by some alternative mechanism (such as a total return swap or cash settlement).

Glitnir and Epiq are requiring the freeze of the claims register for calculation, notice and voting consistency in connection with the convening of a meeting to approve a composition between Glitnir and its creditors to be completed before Dec. 31, 2015.

### **What Happens If a Party Doesn’t Meet the Transfer Cut-Off Time?**

Glitnir and Epiq will use reasonable endeavors to process any claim transfer requests received after Friday, Sept. 11 (“Late-Filed Transfers”). With regards to these Late-Filed Transfers, Glitnir reserves the right to:

- Make distributions under the composition into an escrow account;
- Mark the relevant claim as a disputed claim for voting purposes for the meeting to be convened to consider and approve the composition.

### **How Does the Freeze Impact Payment of Distributions Under the Composition?**

Distributions will only be paid to the holder of the claim as stated on any list of claims or any other document listing the creditors published by the Winding-Up Board following Sept. 11, 2015.

### **How Does the Freezing of Transfers by Glitnir Impact Trading Activity?**

Parties who have already entered into binding trades but cannot settle before the Transfer Cut-Off Time should bear in mind that under English law a “trade is a trade” and, absent such language being agreed to at the time of trade, they will not be able to walk away from the trade. Instead, they will be required to settle by participation or by some alternative means.

Market participants can continue trading Glitnir claims even after the announcement and implementation of the freeze. However, these trades won’t settle by assignment. Instead, if market participants continue to trade on LMA-based documents, they will need to settle by LMA Funded

Participation or other mechanism. LMA-style participations add counterparty risk to the trade that investors may not have considered prior to entering into a binding trade. LMA-style participations create a debtor and creditor relationship between the grantor and the buyer of the participation with the right of the participant to receive an equivalent amount of payments received by the grantor with respect to the loan participated. A buyer of an LMA-style participation is exposed to the seller's credit risk, whereby if the seller becomes insolvent, the participant may be treated like an unsecured creditor of the grantor without having a beneficial interest in the underlying claim.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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